

(1990) 12 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 23654 of 1990

Karnataka State Road Transport Corpn.	APPELLANT
Vs	
N. Nagendrappa and another	RESPONDENT

Date of Decision : 14-12-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 11 A

Citation : (1991) 63 FLR 426 : (1992) 2 LLJ 168

Hon'ble Judges : P.K. Shyamsundar, J

Bench : Single Bench

Judgement

1. I have heard Mr. S. R. Nayak for the petitioner-Corporation and Mr. Mukkannappa who appears on notice for the contesting respondent, a conductor who had been dismissed from service for the alleged misconduct of not issuing few tickets after collecting money. The respondent-workman has since retrieved at the hands of the Labour Court before whom he sought to raise a dispute touching the Management's action in dismissing him from service. He had been dismissed after a domestic enquiry duly held and that was on 4th December, 1979, at Annexure-B. Thereafter the conductor having raised a dispute the matter was referred to the Labour Court. That Court disposed off the reference being Reference No. 50/87 by making the impugned award dated July 6, 1990 as per Annexure-E. The operative portion of the award is :

"Reference is partly allowed. II Party is directed to reinstate I Party to his original post with continuity of service and all other consequential benefits. I Partly is not entitled for back-wages. In the circumstances each party to bear their own costs."

2. I must mention and there is no dispute about it, the Labour Court upheld not merely the validity and fairness of the domestic enquiry but also upheld the findings recorded by the Enquiring authority holding the charges levelled against the workman were proved. This exercise it undertook by going through the records of the domestic enquiry and felt assured the conclusion reached by the person who held the domestic enquiry was based on the material that was

appropriate, relevant and apposite.

"I have carefully perused the material and the evidence adduced before the enquiring authority and I am of the opinion that he has rightly appreciated the same and has come to correct conclusion. There is no reason to discard the said evidence. In view of the same I am of the opinion that the misconduct is proved."

After arriving at the above finding, the learned Judge went on thereafter to bail out the workman by reinstating him into service without awarding any backwages in exercise of the discretionary powers vested in the court under S. 11-A of the Industrial Disputes Act, being of the view that the grievance of the misconduct alleged against the workman notwithstanding its establishment was not such as to warrant the extreme penalty of the dismissal from service, his view in this behalf is expressed as follows :

"Looking to the gravity of the irregularities alleged against the I Party, I am of the opinion that the order of dismissal is not proportionate and same is harsh."

I must also add that the learned Judge has also stepped in to relieve workman from the punishment of dismissal for the reason that the workman has offered to forego the backwages which would be entitled if he be reinstated. The learned Judge being of the view, probably, by denying the workman the backwages to which he would be otherwise entitled to upon being reinstated the same would itself operate as sufficient punishment for the misdeeds of the workman. The learned Judge proceeding further says in the context :

"It is a fact that I Party has given up claims for backwages, relieving the Management of the monetary burden. It was argued by the learned counsel appearing for the I Party that I Party has filed petition and he was diligent in prosecuting his case. Considering facts of the case and the circumstances made out I am of the opinion that this is a fit case to invoke the provisions of S. 11-A of the I.D. Act. Accordingly, issue No. 2 is answered holding that misconduct is proved, but the Management is not justified in dismissing I Party from services."

3. Learned counsel Mr. Nayak, who appears on behalf of the Management of the State Road Transport Corporation, strongly assails the award passed by the Labour Court maintaining that the Court has been too free with its discretionary powers under S. 11-A in interfering with an order of dismissal after affirming the findings by the domestic enquiry that the charges alleged against the workman had been proved to the hilt. Counsel says this was not a case in which there is a room for employing the provisions of S. 11-A and also complained that there has been too much of indulgence by the Labour Court. Touching the ambit and scope of the powers by the Labour Court under S. 11-A and the conditions under which it became exercisable, Mr. Nayak invited my attention to the two decisions of the Supreme Court in the cases of (1) *The East India Hotels Vs. Their Workmen and Others*, : and (2) *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, The decision in *East India Hotels* case is by a Bench of three Judges, whereas the

latter decision in Christian Medical College Hospitals by a Bench of two Judges. Their Lordships in both the cases have viewed with great concern the extreme latitude noticed in some of these cases adopted by the Labour Court restoring the delinquent workmen to their former position. In East India Hotels case the relevant dicta of the Court excerpted in Head Note (B) is as follows :

"..... Once misconduct is proved, either in the enquiry conducted by the employer or by evidence placed before the Tribunal the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive."

The similar effect is the pronouncement in Christian Medical College Hospital case rendered with more parenthesis. Their Lordships pleased to observe as follows Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others,

"Section 11-A of the Act cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under S. 11-A has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under S. 11-A only when it is satisfied that the punishment imposed by the Management is highly disproportionate to the degree of the guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision. The decision of the Industrial Tribunal or of the Labour Court is again subject to judicial review by the High Court and the Supreme Court.

The power of the Industrial Tribunal or the Labour Court under the Industrial Disputed Act is not uncanalised, unguided and unlimited. It cannot therefore be said that the Industrial Tribunal or the Labour Court will function arbitrarily and interfere with every dismissal or discharge of a workman arrived at in a disciplinary enquiry."

4. The two decisions lay down very clearly that the powers of the Labour Court or the Industrial Tribunal under S. 11-A is not without any limitation and that it is neither inexhaustible nor is it without any beacon-light to guide the discretion of the court in the matter of interfering with the punishment imposed by a Labour Court. Their Lordships had observed in Christian Medical College Hospital case that S. 11-A should be enjoined upon only when the Court is satisfied that the punishment imposed by the Management is disproportionate to the degree of guilt of the workman concerned and that the Tribunal or the Labour Court has to give reasons in support of its decision. Let me now see whether the Labour Court's order suffers from any short-fall or deficiency highlighted in the two decisions of the Supreme Court referred to above.

5. The charges alleged against the workman who was a conductor were :

(1) The conductor had failed to issue tickets to a passenger travelling from Stage Nos. 1 to 43 without collecting the fare.

(2) Failed to issue ticket to five passengers travelling from Stage Nos. 32-43 despite collecting of fares.

(3) Wrongly mentioned the total number of passengers as 78/1 in the way-bill even though the number of passengers was 66/1.

It is now mentioned at the Bar that the resultant loss to the Corporation by reason of the conductor's misfeasance was about Rs. 35.10 paise. The question then arises whether a man who had been in the service of the Corporation for about five years from the date of appointment till the date of dismissal (this information is furnished by Mr. Mukkannappa for the respondent workman), probably if there was nothing against the man, causing a loss of Rs. 35.10 to the Corporation which is the biggest fleet owner in the State of Karnataka appeared to be a trivial lapse notwithstanding the moral or virtuous aspect which Mr. Nayak invariably reiterates while inviting the Court to judge the conduct and behaviour of the man who is a trustee, being the custodian of the funds of the Corporation. This is precisely what did bother the Court below and in the context the learned Judge holds that in his view the order of dismissal was not proportionate and that it was extremely harsh. That, on such a view the Labour Court having interfered with the order of punishment appears to be justified even in the light of the dicta of the decisions of the Supreme Court referred to supra. But then, Mr. Nayak does not rest content and goes on to high-light the background in which the order of dismissal was made by the Management. In this Court the Corporation has produced as an annexure a chart said to reflect the past misdeeds of the workman. That chart at Annexure-A contains information regards action taken against the workman by the Management between December 24, 1974 and July 14, 1979 wherein he appears to have been punished by imposition of a penalty of suspension on seven occasions and on some occasions imposed small fines of Rs. 2, 5, 10 etc. In the above said list there is reference to punishment imposed on him for unauthorised absence, on one occasion for having excess cash and on another occasion for not exhibiting rear destination board and on other occasions it is for non-issue of tickets. It is not made clear from any of the charges referred to in the chart whether he had taken money from passengers and not issued tickets. While I do not wish to go into the so-called bad track-record of the conductor with a fine comb, suffice it to notice that the previous conduct was not such as to bear on the morality of the man reflecting the person as a tainted individual. In most cases of not issuing tickets it may well be that the man was a little slow, lethargic or may be even, I should say, not a very competent person. But that he was a pilferer or a thief who had a penchant for helping himself to funds of the Corporation is not something that can possibly be spelled out by looking at the chart at Annexure-A.

6. Be that as it may, Mr. Mukkannappa who appears for the workman says on all those occasions when he was suspended or fined, there was no enquiry at all and not even a summary inquisition. But, of what we have no material. If such a thing had really happened then I do not think the Corporation can ask either this

Court or the Labour Court to take into account the bad track record of the workman as if he had been dealt with like an artifact and not as a human being. I, however, do not wish to go into that aspect of the matter, in that whether the previous punishment had been validly imposed or not. But then the man had no opportunity at all to take a stand in regard to the earlier punishment imposed on him either at the domestic enquiry or before the Labour Court. In the domestic enquiry he appears to have had no opportunity to advert to the bad record except for a short mention in the order of the disciplinary authority, who says :

"It is seen from the history of the record of service, that it is replete with malpractices of similar type. Such recalcitrant, incorrigible conductors have spoiled the image of the Corporation."

Strong as the above observations are, mainly berating the workman for his misdeeds, it appears, however, to be futile for the simple reason the man had no opportunity of defending himself against the calamitous bad record, at the domestic enquiry because the authorities did not specifically advert to it nor was he given any inkling that the disciplinary authority would take into account the past mis demeanors allegedly committed by the workman. Secondly, the domestic enquiry while touching this aspect of the matter without putting workman on notice appears to have clearly erred. The matter did not improve when it went before the Labour Court because there being no advertence to the controversial bad track record of the workman the Labour Court did not refer to it in its proceedings since its attention had not been invited to the same. But then Mr. Nayak does not give up and says the Court having stated in so many words in its order that it has gone through the records of the domestic enquiry before upholding its fairness or validity, Counsel maintains, it therefore followed, the Court had also looked into the bad track record of the workman. That is again a matter bristling in controversy because Mr. Mukkannappa says the chart which is now produced before this Court was never produced before the Labour Court. But that is a different matter. Any record like Annexure-A was part of the record of the domestic enquiry is nobody's case. At any rate, the omission by the disciplinary authority to advert in specific to the previous record of the workman cannot be assailed, I am satisfied a sweeping observation of a general character not even borne out from the records of the domestic enquiry is of no avail. While I do not wish to make a positive statement in that behalf since I do not have those records and it is also unnecessary for the purpose of this writ petition, all that I wish to say is that if the workman had not been given a chance of taking any stand in regard to his past misdeeds either by the disciplinary authority or before the Labour Court, he cannot be nailed to the wall on the basis of a chart like Annexure-A to which his attention had never been drawn at any of the proceedings taken against him or at his instance. It is trite law that any action taken against an individual be it administrative or otherwise must always be attended by fairplay. I do not think the Corporation can contend in this case with any seriousness that the Labour Court ought to have taken into account the bad track record of the workman when for all purposes it was at best nestling in

the records of the domestic enquiry provided it had been produced thereat. That however is not sufficient. I have said times without number that it is futile to highlight lapses on the part of the Court in not taking into account the bad track record, unless its attention is specifically drawn to the same by having been produced in an appropriate manner before the Labour Court simultaneously drawing the attention of the workman to such document and an opportunity given to the workman to be heard regards taking into account the bad track record, with a view to justify the punishment imposed on him. If that is not done, it is clearly a case of the man being condemned without being heard and when that happens, I need hardly add that it would have resulted in not merely transgressions but a total discrediting of the principle of natural justice. For these reasons, I am unable to accede to the submission of Mr. Nayak that I should now act on Annexure-A and hold that Labour Court was not reasonable or acting in so irresponsible in not taking into account the bad track record of the workman concerned. No other point arises as urged in this writ petition.

7. For the reasons mentioned above, the writ petition fails and is dismissed. No costs.